

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively the "United States") and Brinton Manor Nursing Facility ("Brinton Manor") (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Brinton Manor is a 92-bed long-term care facility located at 549 Baltimore Pike, Glen Mills, PA.

B. The United States contends that Brinton Manor submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg, and/or the Medical Assistance Program ("Medicaid"), Title XIX of the Social Security Act, Title 42 U.S.C. §§ 1396-1396v.

C. The United States contends that it has certain civil monetary claims against Brinton Manor under the False Claims Act, other federal statutes and/or common law doctrines, for engaging in the following conduct, during the period from March 1, 2000 through January 31, 2001, for the residents set forth in the subpoenas dated March 5, 2001 and March 28, 2001, relating to alleged inadequate services regarding: (1) nursing care and treatment of residents with diabetes, (2) adequate assessments and evaluations of residents' needs, appropriate care planning and nursing interventions, and (3) falls prevention and management, and submitted and/or caused the submission of claims for reimbursement to Federal health care programs in connection therewith (hereinafter referred to as the "Covered Conduct").

D. Brinton Manor denies the allegations regarding inadequate services and contends that the government does not have any claims against the Brinton Manor based upon the Covered Conduct allegations in Paragraph C or the statutes asserted in Paragraph B. Brinton Manor contends that its conduct was at all times lawful and appropriate.

E. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these

claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Brinton Manor agrees to pay to the United States the sum of One Hundred Ten Thousand Dollars (\$110,000) (the "Settlement Amount"). Brinton Manor agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney as follows:

(A) A payment of Ninety Thousand Dollars (\$90,000) at the time of execution of this Settlement Agreement.

(B) A payment of Twenty Thousand Dollars (\$20,000) unless within 6 months from the date of execution of this Settlement Agreement Brinton Manor employs a full-time clinical practice nurse specialist (CNS) to act as a specialist in both clinical skills and knowledge/practice application. The CNS will be responsible for educational programs in a classroom

setting including, but not limited to, developing learning modules on hypo and hyperglycemia as well as unit in-servicing, and bedside instruction and mentoring. The CNS shall be a master's prepared nurse with significant experience in long-term care. The CNS shall also coordinate with the consultants to address any issues in a timely fashion identified by the consultants. Brinton Manor agrees to employ the selected CNS for at least a two-year period, absent good cause. The settlement agreement term relating to the CNS position shall be in effect for no less than a two-year period from the date of hire of the selected CNS and any subsequent CNS hired within one year of hiring of the selected CNS, except for the provisions contained in paragraphs 8 and 9. If Brinton Manor fails to employ a CNS continuously for at least a year, Brinton Manor agrees to pay the additional amount set forth in this paragraph.

2. Brinton Manor further agrees to perform four educational programs for all direct-care staff within the one year from the effective date of the settlement agreement. Brinton Manor agrees that the four training sessions will specially develop and offer educational content designed to: (a) address the needs of the diabetic resident, with particular

emphasis on the signs and symptoms of hypo and hyperglycemia including atypical presentations and (b) track, evaluate and prevent falls including, at a minimum, management and modification of care plans, assessment of environmental factors, assistive devices and creation of a tracking tool that trends individual and units on which falls are occurring and timely respond to these data. Brinton Manor agrees to submit the curriculum and the presenters scheduled to conduct the trainings to the United States for review and comment no later than thirty (30) days prior to the scheduled training. Brinton Manor agrees to maintain sign-in sheets for all those in attendance for inspection upon request by the United States.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Brinton Manor set forth in this Agreement, conditioned upon Brinton Manor's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release Brinton Manor together with its current and former parent corporations and subsidiaries, the successors and assigns of any of them, current and former officers and directors, and current employees from any civil or administrative monetary claim the

United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are any and all of the following:

(A) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(B) Any criminal liability;

(C) Except as explicitly stated in this Agreement, any administrative liability, including permissive and mandatory exclusion from Federal health care programs;

(D) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(E) Any claims based upon such obligations as are created by this Agreement;

(F) Any claims based on a failure to deliver items or services due, except as set forth in the Covered Conduct;

(G) Any civil or administrative claims against individuals, including former directors, officers, employees, agents or shareholders of defendant Brinton Manor who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct;

(H) any administrative action under 42 U.S.C. § 1320a-7(b) (permissive exclusion), or 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct.

5. Genesis Healthcare Corporation, the parent company of Brinton Manor, certifies it has and promises to continue its existing Corporate Compliance Program that, for and on behalf of Brinton Manor, incorporates the policies and principles set forth in HHS-OIG's Compliance Program Guidance for Nursing Facilities.

6. Brinton Manor agrees that it will comply fully with the applicable statutes, rules and regulations governing the Medicare and Medicaid Programs and the Nursing Home Reform Act and that its policies, protocols and procedures promote such compliance.

7. Brinton Manor agrees to employ independent third-party consultants, to assist in and assess Brinton Manor's compliance with the terms of this Settlement Agreement. The consultants shall be chosen by the United States after consultation with Brinton Manor. Pursuant to this selection process, Marie Boltz, MSN, NHA, and Susan Renz, MSN, RNCS, have been chosen as the Consultants. If the Consultants resign or are removed for any reason by the United States prior to the termination of their term of appointment, the United States, after consultation with Brinton Manor, shall appoint other consultants with the same functions and authorities. The Consultants shall visit Brinton Manor for a period of at least one (1) year from the first monitoring visit and shall have access, at any time, to all current nursing home residents, their medical records, staff and employees and all records in the possession or control of Brinton Manor staff and employees (e.g., quality assurance records). In addition, the Consultants shall advise management and staff as to possible procedures which, in the Consultants' view, may facilitate compliance with this Settlement Agreement. The Consultants may confer and correspond with the parties on an *ex parte* basis.

8. The parties acknowledge that the proposed Consultants will submit an acceptable budget (to the United States and Brinton Manor) for a one (1) year consulting period. The United States and Brinton Manor agree that the total annual consulting fee for the Consultants shall not exceed \$40,000 without prior approval of the parties. The Consultants shall be compensated at the budgeted rate (\$100.00 per hour) for performance of the consulting activities set forth herein. The Consultants may retain independent consultants, as needed, to meet their obligations, provided that the Consultants do not exceed the proposed annual budget without prior approval of the parties and that such independent consultants are approved by the United States after consultation with Brinton Manor. Brinton Manor shall bear all reasonable costs of the Consultants consistent with the hourly rate, not to exceed the budget limits set forth above. Failure to pay the Consultants within thirty (30) calendar days of submission of their invoice shall constitute a breach of this Settlement Agreement subject to paragraph 11.

9. The Consultants shall visit Brinton Manor as they deem appropriate. At all times the Consultants shall attempt to

coordinate their activities with relevant Brinton Manor personnel in order to minimize disruption in the day-to-day operations of the facility. At the conclusion of each visit, the Consultants will meet with Brinton Manor's Administrator (or her designee) to discuss any observations and recommendations that have been identified and make suggestions related to how Brinton Manor can address these observations and recommendations. The Consultants shall create a report (the "Consultants' Report") documenting any observations and recommendations relating to compliance with this Settlement Agreement and shall present the report within ten (10) calendar days of the site visit to Brinton Manor and the United States Attorney's Office. Upon receipt of the Consultants' Report, Brinton Manor will have an opportunity to submit a response, with the assistance of the Consultants, as requested, to address any concerns raised by the Consultants and actions taken by Brinton Manor in response to such concerns. Such response, if any, shall be submitted within ten (10) business days of receipt by Brinton Manor of the Consultants' Report. Brinton Manor and the United States agree that, at the request of either party, they shall meet promptly to discuss any issues or concerns raised by the Consultants. Brinton Manor is not bound by

the Consultants' observations and recommendations but must address them in good faith. In the event the United States believes there has been a breach of this Settlement Agreement, nothing in this Settlement Agreement shall prevent the United States from calling the Consultants as witnesses or from submitting their written observations and recommendations in any proceeding. In the event that Brinton Manor wishes to call the Consultants as witnesses in any proceeding, Brinton Manor will compensate the Consultants for their appearance to the extent appropriate and authorized by law.

10. If, after one (1) year from the effective date of the first visit and in the reasonable judgment of the United States, Brinton Manor has implemented all provisions contained in this Settlement Agreement and there are no unresolved issues that have a material impact on care to the residents of Brinton Manor, the consulting project shall terminate. If the Consultants recommend that the consulting project should be extended beyond the one-year term, the Consultants shall state the basis for such recommendation and the reasons and circumstances for the proposed extension, as well as any proposal they may have for the duration and nature of the proposed extension and a reasonable budget for

their services during the proposed extension. Such proposed extension must be reasonable under the circumstances and Brinton Manor shall continue to compensate the Consultants at the same hourly rate as stated above and at the same annual cap as stated above.

11. In the event that Brinton Manor fails to comply in good faith with any of the terms of this Settlement Agreement relating to it, or should any of Brinton Manor's representations or warrants be materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

a. seek specific performance of this Settlement Agreement and the prevailing party shall be entitled to an award of reasonable attorneys fees and costs in its favor; or

b. exercise any other right granted by law.

12. In the event that the United States exercises any of its rights under paragraph 11 of this Settlement Agreement, Brinton Manor specifically reserves all of its rights to challenge, defend and contest any such action.

13. Brinton Manor waives and will not assert any defenses Brinton Manor may have to any criminal prosecution or administrative action relating to the Covered Conduct, which

defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Settlement bars a remedy sought in such criminal prosecution or administrative action. Brinton Manor agrees that this settlement is not punitive in purpose or effect. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

14. Brinton Manor fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Brinton Manor has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

15. The Amount that Brinton Manor must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph

1 above, will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and Brinton Manor agrees not to resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

16. Brinton Manor agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR), 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf on Brinton Manor, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the Covered Conduct,
- (2) the United States' audit(s) and civil investigations(s) of the Covered Conduct,
- (3) Brinton Manor's investigation, defense, and any corrective actions undertaken in direct response to the

United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),

(4) the negotiation and performance of this Agreement,

(5) the payment Brinton Manor makes to the United States pursuant to this Agreement, and

(6) the third party consultant costs incurred pursuant to paragraph 8 of this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP). However, nothing in this sub-paragraph that may apply to compliance costs affects the status of costs that are not allowable based on any other authority applicable to Brinton Manor. For cost report purposes, the costs associated with the Clinical Practice Nurse Specialist shall not be deemed as mandated by this settlement agreement. All costs otherwise described or set forth in this paragraph 16 are hereafter, "unallowable costs".

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately estimated and accounted for

by Brinton Manor, and Brinton Manor will not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Brinton Manor or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Brinton Manor further agrees that within 90 days of the effective date of this Agreement, it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Brinton Manor or any of its subsidiaries, and will request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Brinton

Manor agrees that the United States, at a minimum, will be entitled to recoup from Brinton Manor any overpayment plus applicable interest as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or request for payment. Any payment due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Brinton Manor or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Brinton Manor or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

17. This Agreement is intended to be for the benefit of the Parties, only, and by this instrument the Parties do not release any claims against any other person or entity.

18. Brinton Manor agrees that it will not seek payment for any of the health care billings covered by this Agreement

from any health care beneficiaries or their parents or sponsors. Brinton Manor waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

19. Brinton Manor expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Brinton Manor, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

20. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

21. Brinton Manor represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

22. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of Pennsylvania.

23. This Agreement may not be amended except by written consent of the Parties.

24. The undersigned individuals signing this Agreement on behalf of Brinton Manor represent and warrant that they are authorized by Brinton Manor to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

25. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

26. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

DATED: _____

PATRICK L. MEEHAN
United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY:

JAMES G. SHEEHAN
Associate United States Attorney
United States Attorney's Office
Eastern District of Pennsylvania

DATED: _____

BY:

DAVID R. HOFFMAN
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY:

LARRY J. GOLDBERG
Assistant Inspector General for
Legal Affairs
Office of Inspector General
United States Department of
Health and Human Services

Brinton Manor Nursing Home

DATED: _____

BY: _____

DATED: _____

BY: _____

Kathleen McDermott
Blank Rome LLP
Counsel for Brinton Manor

